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REHEARING

11/8/99

October 15, 1999

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

AZ CORP COMMISSION
DOCUMENT CONTROL

1999 OCT 18 P 3: 18

RECEIVED

Re: Docket No. RE-00000C-94-0165

Dear Sir/Madam:

I have enclosed the original and ten copies of Sulphur Springs Valley Electric Cooperative, Inc.'s Application for Rehearing regarding the above Docket.

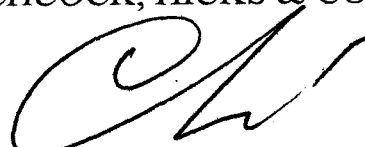
I have also enclosed a copy to be file stamped for my files.

Please do not hesitate to contact me if you have any questions.

Sincerely,

HITCHCOCK, HICKS & CONLOGUE

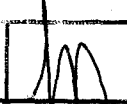
By


Christopher Hitchcock

Arizona Corporation Commission

DOCKETED

OCT 18 1999

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CH/lmr

Enclosures

cc: C.W. Huber, SSVEC
Board of Directors

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CHRISTOPHER HITCHCOCK
STATE BAR NO. 004523

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Commissioner - Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

Arizona Corporation Commission
DOCKETED

OCT 18 1999

DOCKETED BY

IN THE MATTER OF THE COMPETITION)	DOCKET NO. RE-00000C-94-0165
IN THE PROVISION OF ELECTRIC SERVICES)	
THROUGHOUT THE STATE OF ARIZONA)	SULPHUR SPRINGS VALLEY
)	ELECTRIC COOPERATIVE,
)	INC.'S APPLICATION FOR
)	REHEARING AND REQUEST FOR
)	STAY OF DECISION NO. 61969

SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC. ("SSVEC"), an Arizona electric cooperative, non-profit membership corporation, pursuant to A.R.S. §40-253 submits to the Commission this Application for Rehearing and Request for Stay of Decision No. 61969 entered September 29, 1999, including Appendix A thereto (the modification of the Revised Rules A.A.C. R14-2-201 through R14-2-212 and A.A.C. title 14, Chapter 2, Article 16: R14-2-1601 through R14-2-1617 ("Rules"), as published in the Arizona Administrative Register on May 14, 1999) and Appendix B (the Concise Explanatory Statement for the Proposed

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Modifications) (collectively, "Decision"), and of the whole thereof, on the grounds that the Decision is unlawful, unreasonable, unjust, unconstitutional, in excess of the Commission's jurisdiction, arbitrary, capricious and an abuse of the Commission's discretion for the reasons and upon the grounds set forth as follows:

1. The Decision is not supported by any evidence;

2. The Decision violates Article XV, Sections 3 and 14 of the Arizona Constitution by authorizing ESP's to charge rates which are not based on the fair value of the property of PSCs devoted to the public use, nor on a just and reasonable rate of return on such fair value nor on a rate design which will produce just and reasonable rates based thereon.

3. The Decision violates Article XV, Section 3 of the Arizona Constitution by delegating to electric service providers ("ESPs") the authority to determine the rates ESPs will charge customers and by permitting ESPs to charge what are ostensibly "market-determined rates." The Constitution requires the Commission to prescribe the rates to be charged by ESPs which cannot be delegated to an ESP, the market or anyone else.

4. The Decision violates Article XV, Section 3 of the Arizona Constitution by authorizing ESPs, aggregators or self aggregators, as those terms are defined in the Rules, to prescribe classes to be used by ESPs. The Constitution requires the Commission to prescribe classifications to be used by ESPs and this duty cannot be delegated to ESPs or anyone else.

5. The Decision violates Article XV, Sections 3 and 12 of the Arizona Constitution by authorizing ESPs, aggregators or self aggregators to discriminate in charges made to customers

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4 who are within classes of customers prescribed by the Commission that receive a like or
5 contemporaneous service.

6 6. The Decision violates Article XV, Section 2 and 3 of the Arizona Constitution
7 which requires that all corporations other than municipal furnishing electricity for light, fuel or
8 power shall be deemed PSCs by creating a new type of CC&N for ESPs who have not been issued
9 CC&Ns by the Commission pursuant to A.R.S. §§40-281, *et seq.*, as have SSVEC and the other
10 Affected Utilities. Only one type of CC&N is permitted by said Sections for each industry and the
11 only power or jurisdiction granted by such Section 3 of the Arizona Constitution to the
12 Commission with respect to classes of PSCs is to prescribe just and reasonable classifications to be
13 used by PSCs and not the power and jurisdiction to prescribe just and reasonable classes of PSCs.

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15 7. The Decision violates Article IV and Article XV, Section 6 of the Arizona
16 Constitution by purporting to give the Commission the right to exercise legislative powers
17 expressly or impliedly reserved to the Legislature by the Arizona Constitution.

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19 8. The Decision is unconstitutional in violation of the just compensation provisions
20 of the Fifth Amendment as incorporated into the Due Process Clause of the Fourteenth
21 Amendment of the of the United States Constitution, Article II, Section 4 of the Arizona
22 Constitution and Article II, Section 17 of the Arizona Constitution by breaching the contract and
23 exclusive regulatory compact between the State of Arizona and PSCs including SSVEC.

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25 9. The Decision breaches the contract and regulatory compact between the State of
26 Arizona and SSVEC by denying SSVEC the exclusive right to sell electricity and related services

in its certificated areas pursuant to its CC&N and is unconstitutional in violation of Article II, Section 17, Article III and Article VI, Section 1 of the Arizona Constitution which require that when vested property rights are taken or damaged for public or private use, the State must, before such taking or damage, pay on behalf of the owner of the property or property rights taken or damaged just compensation (i) into court, secured by a bond as may be fixed by the court or (ii) into the State treasury on such terms and conditions as are provided by statute.

10. The Decision is unconstitutional, in excess of the jurisdiction of the Commission and in violation of Article II, Section 17, Article III and Article VI, Section 1 of the Arizona Constitution in that:

- A. The issue of just compensation to be paid PSCs, including SSVEC, for the breach of the contract and regulatory compact with the State of Arizona is an issue to be determined by the courts, not the Commission, and the Decision fails to provide for just compensation by the courts.
- B. The Decision places unconstitutional restrictions, burdens and limitations on the right of PSCs, including SSVEC, to obtain just compensation for the breach of the contract and the regulatory compact with the State of Arizona and the loss of and damage to their vested property rights.
- C. The Decision usurps the jurisdiction of the courts by determining whether SSVEC's property, its CC&N, should be put to public use.

11. The Decision is unconstitutional and violates Article I, Section 10, Clause 1 of the

United States Constitution and Article II, Section 25 of the Arizona Constitution in that it impairs the obligations of contracts:

- A. Between the State of Arizona and PSCs, including SSVEC, which have been issued certificates of convenience and necessity by the Commission pursuant to A.R.S. 40-281, et seq., which are in full force and effect, and
- B. Between Arizona Electric Power Cooperative, Inc. ("AEPCO") and its Class A Members, including SSVEC, which contracts are all requirements wholesale power contracts requiring such Class A Members to purchase all of their electricity from AEPCO.
- C. Between SSVEC and its members as they have agreed to purchase all of their electricity from SSVEC.

12. The Decision is unconstitutional, exceeds the jurisdiction of the Commission and violates the just compensation provisions of the United States and Arizona Constitutions by confiscating the property of PSCs, including SSVEC.

13. The Decision violates the Supremacy Clause of Article VI of the United States Constitution, Article II, Section 3 of the Arizona Constitution and the Rural Electrification Act of 1936, as amended, United States Code Annotated, Title 7, Chapter 31, Subchapters I and III ("RE Act") by reason of:

- A. Loans made by the United States pursuant to the RE Act to AEPCO which are secured by utility realty mortgages and security agreements based upon

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the all requirements wholesale power contract between AEPCO and its members, including SSVEC, are placed in jeopardy by the Decision.

B. The frustration of the objectives and means of the RE Act by permitting the benefits of the RE Act from those intended to be its beneficiaries to others such as electric service providers who are not intended to be beneficiaries of the RE Act and who are permitted to use the facilities of PSCs, including SSVEC, without their consent.

C. Loans made by the United States pursuant to the RE Act to SSVEC which are secured by utility realty mortgages and security agreements based upon the bylaws contract between SSVEC and its owners/members are placed in jeopardy by the Decision.

14. The Decision violates the Due Process Clauses of each of the Fourteenth Amendment of the United States Constitution and Article II, Section 4 of the Arizona Constitution for each of the following reasons:

A. The Decision unlawfully amends and/or deprives SSVEC of the benefits of prior decisions of the Commission in its certification, finance, ratemaking and other orders without notice and an opportunity to be heard as required by A.R.S. §40-252.

B. The Decision is contrary to accepted judicial construction of A.R.S. §40-252, as set forth in decisions of the Arizona Supreme Court, as the Decision

permits competitive encroachment into SSVEC's territory without the showing of inability or unwillingness of SSVEC to serve as required by law.

- C. The Decision places an irrational condition of the amendment of SSVEC's CC&N by conditioning the amendment upon final resolution of stranded cost issues for SSVEC, which cannot be determined until the actual start and operation of competition within its certificated area.

15. The Decision violates the Equal Protection Clauses of the 14th Amendment of the United States Constitution and Article II, Section 13 or the Arizona Constitution by burdening SSVEC with unlawful discriminatory restrictions and requirements which are not made applicable to ESPs although both SSVEC and ESPs are PSCs such as:

- A. SSVEC is required by comply with A.R.S. 40-281, et seq., and other regulatory statutes, whereas ESPs are not.
- B. SSVEC is required to serve electricity within its certificated areas, whereas ESPs are not.
- C. SSVEC is required by be a Provider of Last Resort, whereas ESPs are not.
- D. SSVEC as a Utility Distribution Company, as defined by the Rules, has the obligation to assure that adequate transmission import capability is available to meet the load requirements of all of SSVEC's distribution customers, including those served with electricity by ESPs, whereas ESPs are not.
- E. The Decision and Rules require Utility Distribution Companies which

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include SSVEC to unbundle their electric service and provide rates for each unbundled service which shall reflect the cost of providing the services and such rates cannot be downwardly flexible without Commission approval, whereas ESPs are not required to base their rates on costs and their rates can be adjusted downward without Commission approval so long as they are not less than their marginal costs.

16. The Decision violates the First Amendment of the United States Constitution and Article II, Section 6 of the Arizona Constitution, and the provisions of A.R.S. §10-2057 and §10-2157 by seeking to limit the nature and scope of speech in which SSVEC can engage.

17. The Decision is unlawful and exceeds the jurisdiction of the Commission in ordering use or access of facilities of PSCs, including SSVEC, by other providers of electricity without the consent of those PSCs.

18. The Decision is unlawful and exceeds the jurisdiction of the Commission by impermissibly interfering with the internal management and operation of SSVEC.

19. The Decision is unlawful and exceeds the jurisdiction of the Commission by violating the provisions of A.R.S. §40-334, which prohibits discrimination between persons, localities or classes of service as to rates, charges, services or facilities.

20. The Decision is unlawful and exceeds the Commission's jurisdiction by requiring with certain exceptions, that all competitive generation services shall be separated from Affected Utilities by January 1, 2001.

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4 21. The Decision is unlawful and exceeds the Commission's jurisdiction in that it
5 restricts Affected Utilities from providing competitive services as defined in the Rules pursuant to
6 the CC&Ns of the Affected Utilities, including SSVEC.

7 22. The Decision is unconstitutional in that it prohibits PSCs who have been issued
8 CC&Ns pursuant to A.R.S. §§40-281, *et seq.*, from selling electricity and other services
9 competitively outside their certificated areas when electric service providers who have not been
10 issued CC&Ns pursuant to A.R.S. §§40-281, *et seq.*, are granted the right to sell electricity and
11 other services competitively anywhere in the State of Arizona, except in the service territories of
12 foreign cooperatives and municipal corporations or political subdivisions of the State of Arizona
13 who do not elect Reciprocity pursuant to R14-2-1611.

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15 23. The Decision is unlawful and exceeds the Commission's jurisdiction in that
16 several provisions conflict with HB 2663, Chapter 209 of the 1998 Arizona Session Laws,
17 including but not limited to the Decision's provisions as to the provider of last resort obligations,
18 competitive phase in requirements and when certain services such as metering, meter reading,
19 billing and collection may be offered competitively.

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21 24. The Decision impermissibly delegates without controlling standards to others
22 powers which must be exercised by the Commission.

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24 25. The Decision is unlawful, unconstitutional and exceeds the jurisdiction of the
25 Commission by exercising legislative and judicial powers not granted to it by the Arizona
26 Constitution, including but not limited to its stranded cost provisions, its forced divestiture and

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4 competitive service restriction and its code of conduct requirements in A.A.C. R14-2-1607, 1615
5 and 1616, respectively.

6 26. The Decision deprives Affected Utilities including SSVEC of receiving just
7 compensation pursuant to Amendment V and the due process clause of Amendment XIV of the
8 United States Constitution and Article II, Sections 4 and 17 of the Arizona Constitution by
9 making inadequate and arbitrary allowance for and placing unreasonable restrictions on the
10 recovery of stranded costs.
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12 27. A.A.C. R14-2-210.E.3 is unlawful and unconstitutional in prescribing statutes of
13 limitations in violation of Article XVIII, Section 6 of the Arizona Constitution and which are an
14 exercise of legislative powers reserved solely to the Legislature pursuant to Articles III and IV of
15 the Arizona Constitution and unjustly discriminates between the statute of limitations for
16 underbilling by PSCs as distinguished from overbilling by PSCs.
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18 28. Both the manner in which the Decision was adopted, including but not limited to
19 the failure of the Commission to submit the Rules to the Arizona Attorney General for review and
20 action pursuant to A.R.S. §41-1044, and the Decision itself violate the requirements of the
21 Administrative Procedure Act, A.R.S., Title 41, Chapter 6, including but not limited to the
22 provisions of A.R.S. §§41-1025, 41-1026, 41-1030, 41-10444 and 41-1057.
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24 29. The Decision and in particular A.A.C. R14-2-1611 violates the provisions of
25 A.R.S. §§40-203, 40-250, 40-251, 40-252, 40-334, 40-361, 40-365 and 40-367 by permitting the
26 sale of electricity at rates established by ESP's or by the market rather than at rates prescribed by

the Commission and permits ESPs, aggregators or self aggregators to designate classes of consumers of Affected Utilities rather than the Commission prescribing such classes - all of which are contrary to such statutes.

30. The Decision and Rules exceed the jurisdiction of the Commission as to each and all of the following:

- A. There is no provision for stranded costs for distribution utilities such as SSVEC when in all likelihood such distribution utilities will suffer damage or losses from stranded costs after the Rules are implemented.
- B. The Decision and Rules require Utility Distribution Companies including SSVEC to assure that adequate transmission import capability is available to meet the load requirements of all of their distribution customers including those served with electricity by ESPs when SSVEC is not engaged in the electric transmission business.

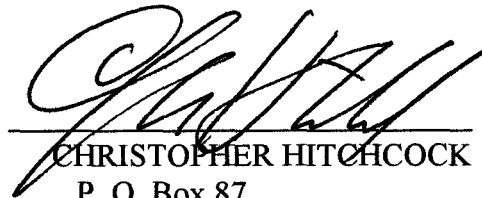
WHEREFORE, having fully stated its Application for Rehearing and Request for Stay, SSVEC respectfully requests that the Commission enter its Order granting this Application for Rehearing and staying the Decision, and the whole thereof, including but not limited to the Rules therein adopted, pending resolution of the issues set forth herein.

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RESPECTFULLY SUBMITTED this 15TH day of October, 1999.

HITCHCOCK, HICKS & CONLOGUE

BY


CHRISTOPHER HITCHCOCK

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ORIGINAL and ten (10) copies of
the foregoing filed this 15TH
day of October, 1999, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing mailed this
15TH day of October, 1999, to:

Chief Hearing Officer
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All other parties listed on the docket.



Laura M. Room